IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3522 OF 2003

Mohamed Mobin Khan & anr. Petitioners

versus

The Bombay Mercantile Co-op.
Bank Ltd. and others Respondents

Mr.V.K.Choudhary for petitioners.

None for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 1st February 2006

PC :

1. Heard Dr.Chaudhary for the petitioner. The petition challenges an order passed by the Maharashtra State Co-operative Appellate Court in Miscellaneous Application preferred by the petitioner for condonation of delay in filing of an appeal. The appeal was filed to challenge a judgement and award dated 20th April 2000 in Dispute No.18 of 1997 decided by the learned Judge, Co-operative Court No.I, Mumbai.

2. It is not in dispute that the Co-operative

Court has passed an award and under the award the liability of the petitioner is determined at Rs.22,13,369.53 Ps.. The dispute was filed by the first respondent bank. The petitioners have been put to terms by the learned President of the Maharashtra State Co-operative Appellate Court and a sum of Rs.75,000/- is directed to be deposited.

3. Dr.Chaudhary contends that he is aggrieved by imposition of condition to pay Rs.75,000/-. In his submission, the condition, as imposed, is onerous and while condoning the delay, the Court below ought to have imposed some reasonable conditions or at least should not have directed deposit of a substantial sum of Rs.75,000/-.

4. None appears for respondents although they are served. A perusal of the application which is filed for condonation of the delay which is about 1 year and 25 days as also the reply thereto, to my mind, as against a liability to pay Rs.22,13,369.53 ps. to the first respondent bank, the condition as imposed does not appear to be so unreasonable or incapable of compliance at all. It is pointed out in the application for condonation of delay that the petitioners became

aware of the award only when the same was sought to be executed.

5. The other contentions are with regard to the merits and the same need not be adverted to. The Court below has taken a note of the reasons which have been placed in the application.

6. In my view, no case is made out for interference under Article 227 of the Constitution of India with the discretion exercised by the Court below. The petition is devoid of any merits and is, therefore, rejected. Ad-interim order to stand vacated. Needless to state that if the amount of Rs.75,000/- is deposited, as directed by the Appellate Court, within a period of four weeks from today, the Appellate Court to hear and decide the matter on merits and in accordance with law.

(S.C.DHARMADHIKARI, J.)